

Military Whistleblower Protection Act

We've had some issues arise recently regarding the Military's Whistleblower Protection Act so thought it appropriate to review what it is. This quarter discusses Whistleblower as it applies to members of the military, next quarter will address DOD civilians.

BLUF: Soldiers have a right to make a protected disclosure to certain agencies without a threat that their careers will be affected. Federal Law & the UCMJ provide this guarantee.

THE FACTS

Members of the Armed Forces shall be free to make a protected communication to a Member of Congress, an IG; a member of a DOD audit, inspection, investigation, or law enforcement organization; or any other person or organization (*including any person or organization in the chain of command designated under Army regulations or other established administrative procedures to receive such communications*).

Reprisal. To take or

threaten to take an unfavorable personnel action, or withhold or threaten to withhold a favorable personnel action against any member of the Armed Forces for making or preparing a protected communication to one of the previously mentioned offices. Violations of this policy are punishable as a violation of Article 92, UCMJ, Failure to obey order or regulation.

Protected Communication.

What is it? A protected communication is any communication made to an agency (listed in the above paragraph) in which a member of the Armed Forces communicates information that he reasonably believes evidences a violation of law or regulation. This includes sexual harassment or unlawful discrimination, gross mismanagement, a gross waste of funds or other resources, an abuse of authority, or a substantial and specific danger to public health or safety.

Personnel Action. Any action taken against a member of the Armed Forces that affects or has the potential to affect that military member's current

position or career. Such actions include a promotion; a disciplinary or other corrective action; a transfer or reassignment; a performance evaluation; a decision on pay, benefits, awards, or training; referral for mental health evaluations under DOD Directive 6490.1; and any other significant change in duties or responsibilities inconsistent with the military member's rank.

Inquiry/Investigation.

If a member of the Armed Forces believes he is a victim of reprisal based on a protected communication, he must file a complaint of reprisal to an IG within 60 days of when the reprisal action took place. The IG will then notify the DOD IG for a determination of whether investigation is warranted. If warranted, the DOD IG must approve the results of the investigation.

See page 5 for some examples.

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Army Relationships with Private Organizations

This article is a general discussion concerning our official and personal relationships with nonprofit professional, scientific and technical private organizations, especially those whose purpose is to support the Army and its ideals, goals and needs. Examples of such private organizations (PO) are the Association of the United States Army (AUSA), **Armed Forces Communications and Electronics Association (AFCEA)**, American Society of Military Comptrollers (ASMC) and Army-Air Force Mutual Aid Association (AAFMAA).

Army employees are not barred from joining, participating in, or holding office in private organizations. On the contrary, they are encouraged to do so, especially when such activity will promote their professional or personal development, or make them an active part of the local military or civilian communities. However, there are rules that govern this personal participation.

Some Can Do's:

Employees may be given time off and may use government resources in their personal participation with POs then they meet the criteria and have the approvals set out in the Joint Ethics Regulation.

If approved by the "agency designee" (a supervisor or, for a General Officer in command, his or her Ethics Counselor), occasional use of the telephone (no toll calls), computer, library and similar resources during **off-duty** time.

If the "agency designee" determines that it is in the Army's interest, Army personnel may accept free attendance at a "widely attended gathering" (meaning a large and diverse group) sponsored by a PO, on their own time or during an excused absence.

DOD employees may become members & may participate in the management of Pos as individuals in a personal capacity when they act exclusively outside the scope of their official position.

Employees may participate in their official capacities as speakers & panel members at conferences, seminars or similar events sponsored by POs subject to limitations in the JER.

Some Specific Don'ts:

Don't appoint a POC in a unit for a PO membership drive or offer a pass or other benefit to the unit with the highest membership or

participation rate in the PO. Do not assign soldiers or DA civilians to work for POs as an official duty.

Don't address subordinates in formation or on Army letterhead to extol the virtues of a particular PO.

Don't require subordinates to attend a PO meeting so that they can learn about and join a private organization.

Don't engage in coercive tactics such as requiring a soldier to explain a decision not to participate in or join a PO.

Don't use OPD, NCOPD & other official settings to promote any specific PO or it's products.

Don't maintain Membership or non-membership lists at any command or staff level.

DOD employees, such as secretaries, clerks & military aides may not be used to support the unofficial activity of another DOD employee in support of a PO except IAW the JER.

An officer or civilian employee who is a PO officer or director will not participate in official Army matters affecting the financial interests of that PO, even though someone else makes the final decision.

The ethical rules governing our relationships with private organizations are in the Office of Government Ethics (OGE) Standards of Ethical Conduct for Employees of the Executive Branch, the Department of Defense (DOD) Joint Ethics Regulation (JER), DOD 5500.7-R, and Army Regulation 210-22, Private Organizations on Department of the Army Installations.

Uniform Corner

“Cell Phones”

A soldier (in uniform) is standing in line at the Burger King talking on a cell phone while wearing a hands-free device. The soldier seems surprised when corrected that she is in violation of AR 670-1.

Army policy on cellular phone use and other electronic devices while in uniform was recently revised to allow for one device (pager or cell phone) worn on the uniform in the performance of duty. Use of hands-free devices with cell phones is not under consideration because they would detract from the uniform. Please note however, this would not apply if soldiers drive a POV in a state that requires use of hands-free devices in vehicles; it would only affect the soldier once outside the vehicle.

AR 670-1 outlines the use

and wear of electronic devices. More specifically para 1-9 (b) reads “At the discretion of the commander, and when required in the performance of duties listed above, soldiers may wear an electronic device on the belt, belt loops, or waistband of the uniform. Only one electronic device may be worn; it may be either a pager or a cell phone. The body of the device may not exceed 4x2x1 inches, and the device and carrying case must be black; no other colors are authorized.

Other types of electronic devices are not authorized for wear on the uniform. If the commander issues and requires the use of other electronic devices in the performance of duties, the soldier will carry them in the hand, pocket, briefcase, purse, bag, or in some other carrying

container. Soldiers will not wear keys, key chains, or electronic devices on the uniform when the commander determines such wear is inappropriate, such as in formation, or during parades or ceremonies. **Soldiers will not wear items or devices on the uniform when not performing required duties.**”

The proponent of the regulation emphatically stated that the use of a hands free microphone with a cellular phone while in uniform is a clear violation of AR 670-1. For more information, visit the Army uniform web page at: [Deputy Chief of Staff, G-1 | Directorates | HR](#), or for specific questions, you may contact MSG K. L. Messman, HQDA Uniform Policy NCO, at DSN 225-6361 or COM (703) 695-6361 - leave a voice message

What is the 15th Regimental Signal Brigade policy on the use of cellular phones and hand free microphones while in uniform?

Policy Memorandum #17 titled “Progressive Privileges and Limitations for IET Soldiers Assigned to the 15th RSB”. It states that cell phones cannot be carried or used by soldiers while on duty, detail, or while walking. This includes hand free microphones.

Frequently Asked Questions – Stop Loss

Q. How are soldiers with approved retirements & who are assigned to a deploying unit affected by the latest Stop Loss MILPER Message (03-101)?

A. Enlisted soldiers who already have an approved retirement/refrad/disharge dates will have their separation orders revoked and will need to resubmit their requests for retirement, refrad, or

discharge IAW stop loss instructions TBP.

Q. How does the latest message affected soldiers on transitional leave?

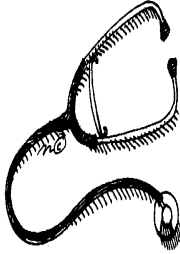
A. Active Duty soldiers on transitional leave, or who have shipped household goods in preparation for transition from service, or are separating within 14 days of the effective date are not subject to the active duty unit stop loss.

Q. Can I get an exception to policy to the latest message?

A. The CDR, PERSCOM is the approval authority for exceptions to policy and this authority may not be further delegated.

Q. Who is the POC for the latest changes?

A. POC for enlisted personnel is SGM Alleyne, DSN 221-5519. For officers is Officer Separations Branch, MAJ Dougherty, DSN 221-5704.



Mental Health Evaluations

“DoD Directive 6490.1, (dated 28 Aug 1997) *Mental Health Evaluations of Members of the Armed Forces* and DoD Instruction 6490.4, *Requirements for Mental Health Evaluations of Members of the Armed Forces*, contains guidance for both emergency and non-emergency referrals. The DoD Instruction 6490.4, paragraph 6, *spells out Cdr's requirements..”*

We've noticed a lack of understanding on the proper procedures for a soldier's referral for mental health evaluations. When investigated, most allegations are procedural violations rather than reprisal actions. This indicates that Cdrs are unfamiliar with the proper procedures for referring soldiers for mental health evaluations. **A Cdr was informed by his first sergeant that PFC Snuffy was seen several times this week on top of the roof of the barracks, barking at the moon. Stop! What should a commander do before referring a soldier for a mental health evaluation?** Cdrs make sure you know the regulation before any referral action. It is the Cdr's responsibility (not the 1SG's or anyone else's) to consult with a mental health professional before referring a soldier for an outpatient mental health evaluation. **What are some situations that may require a Cdr to refer a soldier for a mental health evaluation?** Cdrs must refer soldiers who show signs of endangering themselves or others or when they show signs of

mental illness that may include changes in behavior, mood, or thinking that interfere with normal functioning. Further, soldiers are referred for a mental health evaluation when they face legal or administrative actions that require documentation of mental status. Several involuntary discharge procedures, or 'chapters', require an evaluation.

Commanders will—

Consult with a mental-health professional before referring a soldier for an outpatient mental-health evaluation.

Ensure that a soldier is provided written notice of the referral. The notice includes the following: date and time the mental-health evaluation is scheduled; a brief, factual description of the soldier's behavior and verbal expressions that indicate a mental-health evaluation is necessary; names of mental-health professionals the commander has consulted before making the referral. If consultation is not possible, Cdrs must include the reasons in the notice; names, positions,

and telephone numbers of authorities, including attorneys and [IGs](#), who can help a soldier who questions a referral.

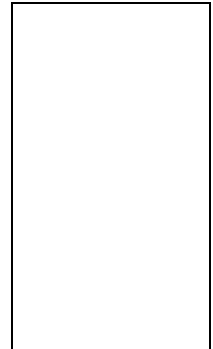
Provide an escort to a soldier referred for a mental- health evaluation.

Some examples of Cdr's procedural errors are: it's the Cdr's responsibility to ensure he consults with a Doctoral level mental health care provider prior to making the referral; if determined to be an emergency MHE, the Cdr still has the responsibility to provide the memo and statement of rights to the soldier as soon as practicable and provide the MTF a memo documenting the circumstances that led to the decision to refer on an emergency basis; in a non-emergency MHE the Cdr must provide the soldier all of the information required by DODI 6490.4.

Cdrs should not consider this article an authoritative treatment of this subject. We encourage consulting their legal advisor if they have any questions about referrals. Please visit the [ARMY-MENTAL-HEALTH](#) website for additional information.

Whistleblower Examples (continued from page 1)

- An Air Force reserve major in California was removed from his position in reprisal for reporting personnel improprieties to an inspector general and reporting a physical assault to the base security police. The command returned the major to his position and issued oral and written counselings to the responsible management officials who reprised against the major. In addition, the command provided training to squadron and group commanders on the provisions of the Military Whistleblower Protection Act.
- An Army sergeant in Germany was threatened with nonjudicial punishment under Article 15 of the Uniform Code of Military Justice and received an unfavorable noncommissioned officer evaluation report in reprisal for making an Equal Opportunity complaint alleging racial harassment by his squad leader. Corrective action is pending.
- An Air Force senior airman in Texas received a lowered enlisted performance report in reprisal for reporting a hostile work environment to an inspector general. The responsible management officials who reprised against the senior airman received letters of reprimand.



From the SJA

Soldiers' & Sailors' Civil Relief Act

The Soldiers' and Sailors' Civil Relief Act of 1940 (SSCRA) was passed by Congress to provide protection to persons on active duty in the U.S. Armed Forces, both active and reserve component, so that they could focus on their mission without worrying about certain civil obligations.

The protection begins with the date of entering active service and generally terminates within 30 to 90 days after release from active duty.

The SSCRA provides critical protections to Active Component service members. It is the SSCRA

that prevents double taxation of your income, allowing only your domicile state to tax your military income. It is the SSCRA that prevents you from having to pay tax on personal property, such as an automobile, when you are present in the state solely due to military orders. The SSCRA also protects Reserve Component personnel and those initially entering active duty with additional protections including the ability to terminate leases in certain circumstances; interest rate protections; the ability to terminate

certain installment contracts; protections against mortgage foreclosures, and delays in civil judicial proceedings. In short, the SSCRA is a package of critical protections to minimize the impact of military service on your ability to meet your civil obligations. All service members should be familiar with its provisions. More specific questions can be addressed at the Fort Gordon Legal Assistance Office, 791-7812.

Q & A Soldiers' & Sailors' Relief Act Headline

1. CAN A SERVICEMEMBER GET OUT OF A LEASE OR RENTAL AGREEMENT? Yes -- a lease covering property used for dwelling, professional, business, agricultural or similar purposes may be terminated by a servicemember. Two conditions must be met:

- a. The lease/rental agreement was signed before the servicemember entered active duty; and
- b. The leased premises have been occupied for the above purposes by the servicemember or his or her dependents.

2. Q. HOW DOES THE SERVICEMEMBER GO ABOUT TERMINATING THE LEASE? To terminate the lease, the servicemember must deliver written notice to the landlord after entry on active duty or receipt of orders for active duty. Oral notice is not sufficient. The effective date of termination is determined as follows:

- a. For month-to-month rentals, termination becomes effective 30 days after the first date on which the next rental payment is due after the termination notice is delivered. For example: if rent is due on the first of the month and notice is mailed on 1 August, then the next rent payment is due on 1 September. Thirty days after that date would be 1 October, the effective date of termination.
- b. For all other leases, termination becomes effective on the last day of the month after the month in which proper notice is delivered. For example: if the lease calls for a yearly rental and notice of termination is given on 20 July, the effective date of termination would be 31 August.

3. Q. CAN I GET A REFUND OF SECURITY DEPOSIT OR PREPAID RENT? If rent has been paid in advance, the landlord must refund the unearned portion. If a security deposit was required, it must be refunded to the servicemember upon termination of the lease. The servicemember is required to pay rent only for those months before the lease is terminated.

4. Q. CAN I STOP AN EVICTION ACTION BY MY LANDLORD? If the property is rented for \$1,200 per month or less, you may ask the court to delay the eviction action for up to three months. The court must grant the stay if you request it and can prove that your ability to pay was materially affected by your military service.

5. Q. DOES THE ACT APPLY TO TIME PAYMENTS OR INSTALLMENT CONTRACTS? Servicemembers who signed an installment contract for the purchase of real or personal property before active duty will be protected if their ability to make the payments is "materially affected" because of active duty service. Remember--

- a. The servicemember must have paid, before entry into active duty, a deposit or installment payment under the contract.
- b. If the servicemember is not able to make payments because of his or her military duty, the Act applies.
- c. The vendor (seller) is thereafter prohibited from exercising any right or option under the contract, such as to rescind or terminate the contract or to repossess the property, unless authorized by a court order.
- d. The court may determine whether a servicemember's financial condition is "materially affected" by comparing the servicemember's financial condition before entry on active duty with his financial condition while on active.

6. Q. WHAT ABOUT MY CREDIT CARDS--CAN I STOP PAYING ON THEM? No--you are still responsible for your debts after entry on active duty. Your obligation to pay your debts is unchanged by military service.

7. Q. WHAT ABOUT THE INTEREST RATES ON MY DEBTS AND MORTGAGE PAYMENTS -- DO THEY GO DOWN WHEN I ENTER MILITARY SERVICE? Yes--when an obligation was incurred before entry on active duty, the interest rate goes down to 6%, unless the creditor (bank, finance company, credit card issuer, etc.) can prove in court that the member's ability to pay was not materially affected by military service. The terms "interest" includes service charges.

8. Q. ARE THERE PROTECTIONS AGAINST MORTGAGE FORECLOSURES? The Act protects servicemembers against foreclosures of mortgages, deeds of trust, and similar security devices, provided the following conditions are met:

- a. The relief is sought on an obligation secured by a mortgage, deed of trust, or similar security on either real or personal property;
- b. The obligation originated prior to entry upon active duty;
- c. The property was owned by the servicemember or dependent before entry on active duty status;
- d. The property is still owned by the servicemember or dependent at the time relief is sought;
- e. The ability to meet the financial obligation is "materially affected" by the servicemember's active duty obligation.

9. Q. CAN JUDICIAL PROCEEDINGS BE DELAYED? A servicemember who is involved in civil (not criminal) judicial proceedings as either a plaintiff or defendant is entitled to a stay of these proceedings if the court finds that his or her ability to prosecute or defend an action is "materially affected" by reason of his or her active duty service. Courts are reluctant to grant long-term stays of proceedings and tend to require service-member's to act in good faith and be diligent in their efforts to appear in court. A servicemember's ability to prosecute or defend a civil suit is shown to be "materially affected" when it can be satisfactorily demonstrated to the court that his or her military duties prevent him or her from appearing in court at the designated time and place. An affidavit setting out all the facts and circumstances is usually required.

10. Q. IF A SERVICEMEMBER IS SUED, CAN A DEFAULT JUDGMENT BE ENTERED AGAINST HIM IN HIS ABSENCE? When a suit is filed, notice of it must be served on the defendant. There are deadlines for filing the servicemember's response. When no response is filed on time, a default is usually entered against the defendant. The SSCRA requires the plaintiff to sign and file an affidavit with the court stating that the defendant is not in the military service before a default can be taken. When the affidavit shows that the defendant is in the military, no default can be taken until the court has appointed an attorney to represent the servicemember defendant. The filing of a false affidavit subjects the filer to a misdemeanor prosecution; the maximum punishment is one year's imprisonment, a fine of \$1,000, or both. Any such matter should be brought to the attention of the U.S. Attorney's Office, as well as the servicemember's civilian attorney.

11. Q. WHAT IF I CANNOT PAY MY INCOME TAXES BECAUSE OF A CALL TO ACTIVE DUTY? The servicemember's ability to pay the tax must be "materially affected" (impaired) by reason of the active duty service. If this is the case, the Act defers (for up to six months after termination of military service) collection of any state or federal income tax on military or nonmilitary income if the payment is due either before or during military service. No interest or penalty may be charged for the nonpayment of any tax on which collection was deferred.

12. Q. WHAT IF I CANNOT PAY MY LIFE INSURANCE PREMIUMS? If you can no longer pay your premiums on commercial life insurance purchase prior to entry into the service, the government may guarantee the payment of the premiums, or require that the insurance carrier treat the unpaid premium as a loan against the policy. Upon separation, you would have up to two years to pay the premiums.

13. Q. IF I HAVE OTHER QUESTIONS, WHAT SHOULD I DO? Please consult a legal assistance attorney or private attorney of your choice as soon as possible. Your lawyer can answer many questions and help you to make a fair and intelligent decision about your choices, options and alternatives. Our legal assistance office stands ready, willing and able to help you in these matters.